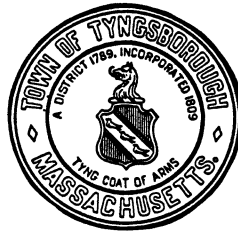


TOWN OF TYNGSBOROUGH  
SPECIAL TOWN MEETING



TUESDAY, OCTOBER 9, 2007  
7:00 P.M.

TYNGSBOROUGH ELEMENTARY SCHOOL

CAFETORIUM

205 WESTFORD ROAD

TYNGSBOROUGH, MASSACHUSETTS

**SPECIAL TOWN MEETING WARRANT**  
**October 9, 2007**  
**7:00 P.M.**

Middlesex, SS.

To either of the Constables of the Town of Tyngsborough, Massachusetts, in the County of Middlesex:

**GREETINGS:**

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town of Tyngsborough, qualified to vote in elections and Town affairs, to meet at the Tyngsborough Elementary School Cafetorium, 205 Westford Road in said Tyngsborough on the ninth day of October, in the year two thousand seven next at 7:00 o'clock in the evening then and there to act on the following articles:

**Article 1.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds a sum of money to the Highway Union salary, wages, and expense accounts to fund the collective bargaining agreement with SEIU, Local 888, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee will make a recommendation on Town Meeting floor.

The Board of Selectmen will make a recommendation on Town Meeting floor.

**Article 2.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds a sum of money to the Clerical Union salary, wages, and expense accounts to fund the collective bargaining agreement with SEIU, Local 888, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee will make a recommendation on Town Meeting floor.

The Board of Selectmen will make a recommendation on Town Meeting floor.

**Article 3.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds a sum of money to the Mid-Management Union salary, wages, and expense accounts to fund the collective bargaining agreement with SEIU, Local 888, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee will make a recommendation on Town Meeting floor.

The Board of Selectmen will make a recommendation on Town Meeting floor.

**Article 4.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds a sum of money to the Police and Dispatchers Union salary, wages, and expense accounts to fund the collective bargaining agreement with NEPBA, Local 8, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee will make a recommendation on Town Meeting floor.

The Board of Selectmen will make a recommendation on Town Meeting floor.

**Article 5.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds a sum of money to supplement various municipal government accounts for fiscal year 2008, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee will make a recommendation on Town Meeting Floor.

The Board of Selectmen will make a recommendation on Town Meeting Floor.

**Article 6.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds the sum of \$67,781 to supplement the Tyngsborough School Budget for fiscal year 2008 to be expended by the School Committee for technology salaries and expenses, or take any other action relative thereto.

Submitted by: School Committee

The Finance Committee recommends approval of this article and that \$61,891 be raised and appropriated, and that \$5,890 be transferred from the Greater Lowell Technical High School Acct. #301-5300.

The Board of Selectmen recommends approval of this article.

**Article 7.** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds the sum of \$25,000 to be expended by the School Committee for conducting a search for replacing the Superintendent of Schools, or take any other action relative thereto.

Submitted by: School Committee

The Finance Committee will make a recommendation on Town Meeting Floor.

The Board of Selectmen will make a recommendation on Town Meeting Floor.

**Article 8** To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds the sum of \$118,632 to supplement the Tyngsborough School Budget for fiscal year 2008 to be expended by the School Committee for reimbursable medical services provided to school pupils who are in residential special education programs pursuant to the provisions of Chapter 71B and for other reimbursable medical services provided by the school department pursuant to state or federal law to students requiring educational or related medical services, or take any other action relative thereto.

Submitted by: School Committee

The Finance Committee recommends approval of this article and that \$118,632 be raised and appropriated.

The Board of Selectmen recommends approval of this article.

**Article 9.** To see if the Town will vote to appropriate by transfer a sum of monies from Retained Earnings to the Expense Account for FY08 in the Sewer Enterprise Fund, to be expended by the Sewer Commissioners, or take any other action relative thereto.

Submitted by: Sewer Commissioners

The Finance Committee recommends approval of this article and that \$175,000 be transferred.

The Board of Selectmen recommends approval of this article.

**Article 10.** To see if the Town will vote to rescind the borrowing authorization of \$200,000 approved under Article 6 at the Special Town Meeting on May 15, 2007, and instead appropriate by transfer from available funds a sum of \$200,000 for the purpose of paying costs of installing a holding tank, oil/water separator, drain(s), and vehicle wash system for the handling of oil, grease, and water at the Highway Garage, all costs of any necessary engineering, plans, storm water pollution prevention plans and permit applications, and for the payment of any and all other costs incidental and related thereto, all of which shall be expended at the direction of the Board of Selectmen, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee takes no action on this article.

The Board of Selectmen will withdraw this article on Town Meeting floor.

**Article 11.** To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds a sum of money to supplement the Stabilization Fund, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee takes no action on this article.

The Board of Selectmen will withdraw this article on Town Meeting floor.

**Article 12.** To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds a sum of money to supplement the Capital Asset Stabilization Fund, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee recommends approval and that the Town appropriate by transfer \$200,000 from Free Cash to the Capital Asset Stabilization Fund.

The Board of Selectmen recommends approval of this article.

**Article 13.** To see if the Town will vote to appropriate by transfer from available funds a sum of money to be expended by the Board of Selectmen to be used to stabilize the tax rate for fiscal year 2008, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee recommends approval of this article and that the Town appropriate by transfer from Free Cash the sum of \$21,000, and further that the Town appropriate by transfer from the Sale of Real Estate Fund the sum of \$200,000 to be used as a funding source for the Town's debt service principal Acct. #710-5000-716.

The Board of Selectmen recommends approval of this article.

**Article 14.** To see if the Town will vote to accept a gift of land from Patrick J. and Helen M. Flaherty located at 290 Middlesex Road, Assessors Map 20, Block 39, Lot 0, and for a more particular description see deed to grantors recorded at Middlesex North District Registry of Deeds, Book 4255, Page 162, containing approximately .05 acres of land, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee takes no action on this article.

The Board of Selectmen recommends approval of this article.

**Article 15.** To see if the Town will vote to amend the Tyngsborough General By-Law by adding the following new article for the management of stormwater and illicit connections, obstructions, and illegal discharges to the storm sewer system, or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee takes no action on this article.

The Board of Selectmen recommends approval of this article.

# **BY-LAW FOR THE MANAGEMENT OF STORMWATER AND ILLICIT CONNECTIONS, OBSTRUCTIONS AND ILLEGAL DISCHARGES TO THE STORM SEWER SYSTEM**

## **1.0. BACKGROUND**

1.1. Land uses, developments and conversions in the Town of Tyngsborough (the "Town") affect its streams, ponds, lakes, and drinking water supplies. These land use changes can also alter the hydrological response of local watersheds and increase stormwater runoff rates and volumes which in turn increase flooding, erosion, sediment transport and deposition, nonpoint source pollution and ground water recharge. This in turn affects public safety, public and private property, surface water, drinking water supplies, groundwater resources, aquatic life, and property values.

1.2. These adverse affects can be controlled and minimized through the regulation of stormwater runoff quantity and quality from construction, site alteration, new development, and redevelopment and by the use of both structural and nonstructural best management practices (BMP's).

1.3. Municipalities in the Commonwealth of Massachusetts ("Commonwealth") are required to comply with a number of state and federal laws, regulations and permits which require the municipality to address the impacts of illegal discharges and illicit connections and post development stormwater runoff quality, quantity and nonpoint source pollution.

1.4. Therefore, the Town has determined that it is in the public interest to regulate construction site alteration and post development/redevelopment stormwater and illegal discharges in order to control and minimize increases in stormwater discharge rates and volumes, soil erosion and sedimentation, nonpoint source pollution, illicit connections and illegal discharges into the storm sewer system by the adoption of a By-law for the management of stormwater and illicit connections, obstructions and illegal discharges to the storm sewer system (the "By-law").

## **2.0. PURPOSE AND AUTHORITY**

### **2.1. Purpose**

2.1.1. The purpose of this By-law is to regulate stormwater runoff, non-point source pollution, illicit connections, illegal discharges and obstructions to the storm sewer system, as this is necessary for the protection of the Town's water bodies and groundwater, for safeguarding the public health, safety, welfare and the environment, including drinking water supplies, aquatic life and habitats, property values, and for decreasing the risk of flooding, erosion and pollution.

2.1.2. This By-law shall apply to all development and redevelopment, to obstructions to flows and to flows entering the storm sewer system on public or private ways within the Town and to any direct discharge into the surface and ground waters and watercourses within the Town.

2.2. The objectives of this By-law are:

- 2.2.1. To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4);
- 2.2.2. To prohibit illicit connections and illegal discharges to the MS4;
- 2.2.3. To require the removal of all such illicit connections;
- 2.2.4. To comply with state and federal statutes and regulations relating to stormwater illegal discharges;
- 2.2.5. To establish the legal authority to ensure compliance with the provisions of this By-law through inspection, monitoring and enforcement.
- 2.2.6. To prevent contamination of drinking water supplies.
- 2.2.7. To establish the minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.
- 2.2.8. To establish minimum post development stormwater management standards and design criteria for the regulation and control of stormwater runoff quality and quantity.
- 2.2.9. To require that new development and redevelopment maintain the predevelopment hydrologic characteristics in their post development state as nearly as practicable to insure that the purposes outlined above are met.

2.3. Authority

- 2.3.1. This By-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the Federal Clean Water Act and as authorized by the citizens of the Town at the Special Town Meeting of October 9, 2007.
- 2.3.2. The Conservation Commission (the "Commission") shall administer, implement and enforce this By-law. Any powers granted to or duties imposed upon the Commission may be delegated to employees or agents of the Commission.
- 2.3.3. Nothing in this By-law, or regulations adopted pursuant to, is intended to replace the requirements of any other By-law, regulation or code (e.g. building, plumbing, sewer) that may have been or may be adopted by the Town or the Commonwealth.

**3.0. DEFINITIONS**

For the purposes of this By-law, the following definitions shall apply:

Alter: refers to any activity which will change the ability of a ground surface area to absorb water or will change the surface drainage patterns.

Authorized Enforcement Agency: The Conservation Commission, its employees or agents designated to enforce this By-law.

Best Management Practice (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1241 et seq.) as hereafter amended.

Commission: the Tyngsborough Conservation Commission.

Development: The modification of land to accommodate a new use, expansion of an existing use and usually involving construction and/or land disturbance.

Discharge Of Pollutants: The addition from any source of any pollutant or combination of pollutants into storm sewer systems or into the surface and ground waters and watercourses within the Town from any source.

Groundwater: All water beneath the surface of the ground.

Illegal Discharge: Any direct or indirect non-stormwater discharge to storm sewer systems, and any direct discharge into the surface and ground waters and watercourses within the Town, except as specifically exempted in Section Six. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from the activities exempted pursuant to Section Six of this By-law.

Illicit Connection: Any surface or subsurface drain or conveyance, which allows an illegal discharge into storm sewer systems. Illicit connections include conveyances which allow a non-stormwater discharge to storm sewer systems including sewage, process wastewater or wash water and any connections from indoor drains sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-law.

Impervious Surface: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

Municipal separate storm sewer system (MS4) or municipal storm sewer system: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm sewer, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewerage system owned or operated by the Town.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the State that authorized the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Any discharge to the storm sewer systems not composed entirely of stormwater.

Obstruction: Anything that impedes or hinders the free flow of stormwater and is not part of the storm sewer system.

Person: Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted By-law, and any officer, employee, or agent of such person.

Permitting Authority: The Conservation Commission of the Town.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm sewer system, sewage treatment works or the surface and ground waters and watercourses within the Town. Pollutants shall include, but are not limited to:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock; sand; salt; soils;
- (10) construction wastes and residues;
- (11) noxious or offensive matter of any kind.

Process wastewater: means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Redevelopment: Development, rehabilitation, expansion, demolition or phase projects that disturb the ground surface or increase the impervious area.

Regulations: Unless otherwise stated, those rules and regulations promulgated by the Conservation Commission under Section Four of the By-law.

Stormwater: Stormwater runoff, surface water runoff and drainage, and snow and ice melt.

Storm Sewer System: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm sewer, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewer system on public or private ways within the Town.

Terms Not Defined: Should any term be used and not defined, the definition found in the Town Zoning By-law shall apply.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either



separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous Under M.G.L. c.21C and c.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

Uncontaminated: Water containing no pollutants.

Watercourse: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

Wastewater: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

#### **4.0 REGULATIONS**

4.1. The Commission shall promulgate rules, regulations, a permitting process, application forms and a fee structure to effectuate the purposes of this By-law. Failure by the Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law.

4.1.1. Said rules, regulations and process shall be adopted after a public hearing on the regulations, rules and process and said hearing shall comply with all aspects of the Massachusetts Open Meeting Law.

4.1.2. Said rules, regulations and process will, at a minimum, follow and utilize the specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy as amended and issued by Massachusetts Department of Environmental Protection.

4.1.3. The adopted rules, regulations and process, shall be periodically reviewed and updated as necessary by the Commission.

#### **5.0. PROHIBITED ACTIVITIES**

5.1. Illegal discharges: No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into storm sewer systems or the surface and ground waters and watercourses within the Town.

5.2. Illicit Connections: No person shall construct, use, allow, maintain or continue any illicit connection to storm sewer systems, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

5.3. Obstruction - Storm Sewer Systems: No person shall obstruct or interfere with the normal flow of stormwater in or out of storm sewer systems without prior approval from the Commission or its designated agent.

## **6.0. EXEMPTIONS**

6.1. The following land disturbing activities may be performed without a permit.

6.1.1. Normal maintenance and improvement of land in agricultural use as defined in the Massachusetts Wetlands Protection Act regulations 310 CMR 10.04.

6.1.2. Maintenance of existing landscaping, stone walls, retaining walls, gardens or lawns associated with a single family residence.

6.1.3. Construction of utilities other than drainage systems that will not alter terrain, ground cover or drainage patterns.

6.1.4. Emergency repairs to any stormwater management facility or practice that poses a threat to public health, safety, welfare or the environment.

6.1.5. Any work or projects for which all necessary local approvals and permits have been issued prior to the effective date of this By-law.

6.1.6. Any land disturbance that results in a cumulative land disturbance of less than 5,000 s.f. providing appropriate erosion and sedimentation controls are in place and properly maintained.

6.1.7. Illegal discharges or flows resulting from fire fighting activities.

6.2. The following non-stormwater discharges or flows are exempt from regulation provided that the source is not a significant contributor of a pollutant to storm sewer systems or watercourses or waters of the United States, the Commonwealth, or the Town.

6.2.1. Municipal waterline flushing;

6.2.2. Illegal discharges from landscape irrigation or lawn watering;

6.2.3. Water from individual residential car washing and temporary fund-raising car wash events;

6.2.4. Illegal discharges from dechlorinated swimming pool water provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance;

6.2.5. Illegal discharges from street sweepers of minor amounts of water during operations;

6.2.6. Non-stormwater illegal discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;

6.2.7. Flows from potable water sources;

6.2.8. Diverted stream flows;

6.2.9. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

6.2.10. Uncontaminated groundwater discharge from a sump pump;

6.2.11. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation;

6.2.12. Dye testing, provided verbal notification is given to the Commission prior to the time of the test.

6.3. When there is any question as to whether an activity is exempt from the By-law and the regulations promulgated under Section Four above, the Commission shall make a definitive ruling as to the applicability of the By-law and regulations to the activity in question.

## **7.0. SUSPENSION OF STORM SEWER SYSTEM ACCESS**

7.1. The Commission may suspend storm sewer system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge, illicit connection or obstruction that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the authorized enforcement agent may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

7.2. Any storm sewer system within the Town in violation of this By-law may have its storm sewer system access terminated if such termination would abate or reduce an illegal discharge. The Commission will notify, in writing, a violator of the proposed termination of storm sewer system access. The violator may petition, in writing, the Commission for reconsideration and a hearing. A person commits a separate offense if the person reinstates storm sewer system access to premises terminated pursuant to this section, without prior written approval from the Commission.

## **8.0. NOTIFICATION OF SPILLS**

8.1. Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police Departments, Highway Department, Commission and Board of Health. This notification shall be followed by written notification to said departments within twenty four hours. In the event of a release of non-hazardous material, said person shall notify the Commission no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agent within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **9.0. ENFORCEMENT**

9.1. The Commission or its authorized agent shall enforce this By-law, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

9.2. Civil Relief: If anyone violates the provisions of this By-law, regulations, permit, notice, or order issued thereunder, the Commission may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

9.3. Orders:

9.3.1. The Commission may issue a written order to enforce the provisions of this By-law or the regulations thereunder, which may include but is not limited to: (a) elimination of illicit connections or illegal discharges to the storm sewerage system; (b) termination of access to the storm sewerage system; (c) performance of monitoring, analyses, and reporting; (d) a cease and desist order to the violator or property owner.

9.3.2. Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Commission within thirty days following the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Commission affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c.59, § 57 after the thirty-first day at which the costs first become due.

9.4. Criminal and Civil Penalties: Any person who violates any provision of this By-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine of three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

9.5. Non-Criminal Disposition: As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c.40, § 21D. The Commission shall be the enforcing entity. The penalty for the first violation shall be one hundred dollars. The penalty for the second violation shall be two hundred dollars. The penalty for the third and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

9.6. Entry to Perform Duties under this By-law: To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Commission, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this By-law and regulations and may make or cause to be made such examinations, surveys or sampling as the Commission deems reasonably necessary.

9.7. Appeals: The decisions or orders of the Commission shall be final. Further relief shall be to a court of competent jurisdiction.

9.8. Remedies Not Exclusive: The remedies listed in this By-law are not exclusive of any other remedies available under any applicable federal, state or local law.

#### **10.0. VARIANCES**

10.1. A variance from the provisions of this By-law may be granted by the Commission, if the variance will not adversely affect public health, safety, welfare, the environment, public and private property, drinking water supplies, recreation, aquatic habitats and life, property values and other uses of land and waters.

10.2. No variance shall be granted unless the applicant demonstrates that the enforcement of this By-law would be manifestly unjust and the applicant has established that a level of protection for public health, safety, welfare or the environment at least equivalent to that provided under this By-law can be achieved without strict application of the By-law or subsequent regulations.

#### **11.0. SEVERABILITY**

11.1. If any provision, paragraph, sentence, or clause, of this By-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

#### **12.0. TRANSITIONAL PROVISIONS**

12.1. Property owners shall comply with this By-law on a schedule set forth in the Commission order, but such property owners shall in no case have more than six months from the effective date of the By-law to comply with its provisions, unless good cause is shown for the failure to comply with the By-law during that period.

**Article 16.** To see if the Town will vote to hear a progress report from the Economic Development Committee relative to the planning efforts underway for the Town Center and Middlesex Road, or take any other action relative thereto.

Submitted by: Board of Selectmen and Economic Development Committee

The Finance Committee takes no action on this article.

The Board of Selectmen recommends approval of this article.

**Article 17.** To see if the Town will vote to appropriate from existing Community Preservation Budgeted Reserve, Historic Preservation Reserve, Affordable Housing Reserve, Unreserved Fund Balance, and/or borrow the sum of \$15,000 to be expended by the Board of Selectmen for the preparation of the Town Center Development and Preservation Plan, or take any other action relative thereto.

Submitted by: Community Preservation Committee

The Finance Committee recommends approval of this article, and that to meet this appropriation the sum of \$5,000 is appropriated from the existing Community Preservation Budgeted Reserve, the sum of \$5,000 is appropriated from the Historic Preservation Reserve, and the sum of \$5,000 is appropriated from the Affordable Housing Reserve.

The Board of Selectmen recommends approval of this article.

**Article 18.** To see if the Town will vote to appropriate and transfer \$26,308.11 from the Community Preservation Unreserved Fund Balance to the Community Preservation Reserve for Open Space, or take any other action relative thereto.

Submitted by: Community Preservation Committee

The Finance Committee recommends approval of this article.

The Board of Selectmen recommends approval of this article.

**Article 19.** To see if the Town will vote to appropriate from the Community Preservation Fund Budgeted Reserve Account the sum of \$8,000 to be expended by the Board of Selectmen for the purpose of eradicating non-native weeds in Lake Mascuppic, or take any other action relative thereto.

Submitted by: Community Preservation Committee

The Finance Committee recommends approval of this article.

The Board of Selectmen recommends approval of this article.

**Article 20.** To see if the Town will vote to appropriate from the Community Preservation Fund Affordable Housing Reserve Account the sum of \$4,000 to be expended by the Board of Selectmen for the continued support of the Merrimack Valley Regional Housing Consortium, or take any other action relative thereto.

Submitted by: Community Preservation Committee

The Finance Committee recommends approval of this article.

The Board of Selectmen recommends approval of this article.

**Article 21.** To see if the Town will vote to amend the Tyngsborough Zoning By-Law section 2.15.11.3 by deleting the following sentence:

In the case where no minimum yard requirements were in effect at the time the boundaries of such lot were defined, the minimum front yard shall be 20 feet and the minimum side and rear yards shall be 10 feet.

Or take any other action relative thereto.

Submitted by: Board of Selectmen

The Finance Committee takes no action on this article.

The Board of Selectmen recommends approval of this article.

The Planning Board will make a recommendation on Town Meeting Floor.

And you are hereby directed to serve this Warrant, by posting attested copies thereof at the Town Hall, Lakeview Avenue Community Center, Kendall Road Fire Station No. 1, Lakeview Avenue Fire Station No. 2, and Flint's Convenience Store in said Town, fourteen (14) days at least before the time of holding said meeting.

HEREOF FAIL NOT, and make due return the Warrant, with your doings thereon to the Town Clerk at the time and place of meeting, aforesaid.

Given under our hands and seals this 24th day of September, in the year two thousand seven.

Board of Selectmen

Richard B. Lemoine, Chairman

Kevin V. O'Connor, Vice-Chairman

Karyn M. Puleo, Clerk

Jacqueline M. Schnackertz

Jason S. Booth